



S. RUSSELL SYLVA
Commissioner

The Commonwealth of Massachusetts
Department of Environmental Quality Engineering
Metropolitan Boston - Northeast Region
5 Commonwealth Avenue
Woburn, Massachusetts 01801



SEMS DocID

621122

TO: Ronald Vitale
17 Cobbler's Lane
Beverly, MA 01915

RE: Vitale Flyash & Solid Waste Dumpsite
L.P. Henderson Road
Beverly, MA

ADMINISTRATIVE ORDER

The Department of Environmental Quality Engineering (the Department) has determined that you are in violation of Massachusetts General Law (M.G.L.) Chapter 111, Section 150A; M.G.L. Chapter 131, Section 40; M.G.L. Chapter 111, Section 160 & 167; M.G.L. Chapter 21; and M.G.L. Chapter 21E. These laws govern Solid Wastes, Wetlands, Water Supply, Water Pollution, and Oil/Hazardous Materials, respectively, and therefore, this Order is issued.

I STATEMENT OF FACTS

The facts which support this Administrative Order are as follows:

- 1) Through an arrangement, formal or otherwise, with the City of Beverly, you maintain an interest in the property located at L.P. Henderson Rd. and Cabot Street in Beverly, and identified at the city assessor's office as Lot 6 on page 90. Although the property is owned by the City of Beverly, it was once owned by the Vitale family, and was awarded to you by a probate court.
- 2) The Airport Stream, which crosses the site, is a tributary to a surface water supply. The site borders a vegetated wetlands, and is located in the watershed of Wenham Lake, less than 2,000 feet from the lake.
- 3) This site is not assigned as a solid waste disposal facility by state or local authorities.

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- 4) Large quantities of solid waste material (automobile bodies, scrap metal, household appliances, asphalt shingles, asbestos shingles, steel drums, municipal refuse, etc.) have been disposed on-site. These conditions were most recently observed on March 6, 1986.
- 5) The solid wastes, and large quantities of flyash, have been disposed in wetlands areas bordering the Airport Stream.
- 6) The past flyash disposal has resulted in unstable banks along wetlands areas. As a result, flyash is eroding further into wetlands areas, and is being transported by the Airport Stream to other wetlands areas and into Wenham Lake, the public drinking water supply for Beverly and Salem.
- 7) Water quality analyses from the Airport Stream, taken from a location downstream of the dumpsite, show increased levels of total coliform, fecal coliform, suspended solids, total solids, conductivity, iron, chloride, sodium, ammonia, pH and alkalinity when compared to an upstream sample.
- 8) A large oil-stained area of soil is present near the fuel storage area adjacent to the on-site building. This constitutes a "release" of oil/hazardous materials pursuant to M.G.L. Chapter 21E.
- 9) You have never notified the Department of the release of oil/hazardous materials.

II VIOLATIONS OF LAW

Based on the facts stated above, the Department has found you in violation of the following provisions:

- 1) Facts 3 and 4 above support the determination that a violation of M.G.L. Chapter 111, Section 150A has occurred. M.G.L. Chapter 111, Section 150A states:

No place in any city or town shall be established or maintained or operated by any person, including any political subdivision or agency of the Commonwealth, as a site for a facility, unless such place has either been assigned by the Board of Health of such city or town as a site for a facility after a public hearing, subject to the provisions of any ordinance or by-law adopted therein under Chapter forty A or corresponding provisions of earlier laws, or, in the case of an agency of the Commonwealth, has been assigned by the Department of Environmental Quality Engineering, in this section called the department, after a public hearing, and unless public notice of such assignment has been given by the Board of Health.

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- 2) Facts 3 and 4 above support the determination that a violation of M.G.L. Chapter 111, Section 150A has occurred. M.G.L. Chapter 111, Section 150A states:

A facility shall not be constructed or operated unless the proposed use and the plans or design therefor have been approved by the Department.

- 3) Facts 3, 5 and 6 support the determination that a violation of M.G.L. Chapter 131, Section 40 has occurred. M.G.L. Chapter 131, Section 40 states, in part, that no filling of a wetland may occur without filing written notice of intention to fill, including such plans as may be necessary to describe such activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Not only have solid wastes and flyash been filled in on-site wetlands in the past, but the unstable banks of the flyash deposits have created a condition of continual erosion into the Airport Stream and from there to the wetlands of the stream and Wenham Lake.
- 4) Facts 4, 6 and 7 support the determination that a violation of 310 CMR 22.20(3) has occurred. 310 CMR 22.20(3) (Adopted under the authority granted in Chapter 111, Section 160) states: No human excrement or compost containing human excrement, or municipal, commercial or industrial refuse or waste product or polluting liquid or other substance which in the opinion of the Department is of a nature poisonous or injurious either to human beings or animals, or other putrescible organic matter whatsoever, shall be discharged directly into or at any place from which such liquid or substance may flow or be washed or carried into said source of water supply or tributary thereto.
- 5) Facts 4, 6 and 7 support the determination that a violation of M.G.L. Chapter 111, Section 167 has occurred. Chapter 111, Section 167 states: No sewage, drainage or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a town, public institution or water company for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into any feeders of such pond or stream within twenty miles above the point where such supply is taken.

- 6) Facts 6 and 7 above support the determination that a violation of M.G.L. Chapter 21, Section 43 has occurred. Chapter 21, Section 43(2), states in part: No person shall discharge pollutants into waters of the Commonwealth nor construct, install, modify, operate or maintain an outlet for such discharge or any treatment works, without a currently valid permit issued by the director. No person shall engage in any other activity that may reasonably be expected to result directly or indirectly in discharge of pollutants into waters of the commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection, without a currently valid permit issued by the director, unless exempted by regulation of the director.
- 7) Facts 8 and 9 support the determination that a violation of M.G.L. Chapter 21E has occurred. M.G.L. Chapter 21E, Section 7, the "Massachusetts Oil & Hazardous Material Release Prevention and Response Act" requires any person responsible for a release of oil/hazardous material, to notify the Department of such release. You, as former owner/operator of the subject property, are a responsible party according to M.G.L. Chapter 21E, Section 5a.

III Conclusion and Order

On the basis of the facts and law stated above, and pursuant to the authority granted to the Department by M.G.L. Chapter 111, Section 150A, M.G.L. Chapter 131, Section 40, M.G.L. Chapter 111, Section 160 & 167, M.G.L. Chapter 21 and M.G.L. Chapter 21E, you are hereby Ordered to take the following actions to remedy the violations noted above:

- 1) Submit, by May 1, 1986, a written proposal to the department which details plans to remove all solid wastes and other construction/demolition debris from the subject property. Upon receiving written approval of this plan, you shall complete removal of such waste/debris within two months.
- 2) By May 1, 1986, file with the Department a Scope of Work which, at a minimum, must address the following:
 - a) dredging of all flyash which has eroded from the site into adjacent wetlands, and disposal of dredge material in a manner to prevent future siltation/contamination of wetlands.
 - b) stabilization of flyash deposits to prevent continued erosion into wetlands.
 - c) restoration of damaged wetland vegetation.

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This work shall be completed under the supervision of a registered professional engineer who will prepare and submit appropriate plans and reports showing existing site conditions and proposed alterations as is required in a wetlands project. If it is proposed that any wetlands alteration is to remain permanent, a Notice of Intent for said alterations shall be filed with the Beverly Conservation Commission and the Department.

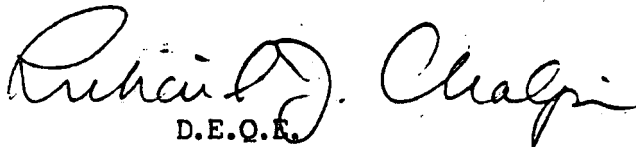
- 3) Prepare and submit to the Department's Division of Solid and Hazardous Waste by May 1, 1986, a scope of work for a site assessment. This submittal shall address, at a minimum, a program to establish and maintain permanent monitoring stations to establish the quality of surface water and groundwater at the site. This program shall be implemented within one month of the Department's approval of the scope-of-work plan.

You are advised that the cited laws and regulations each provide for separate penalties or imprisonment, or both, for each day of each violation thereof covered by this Order which is not corrected in accordance with the terms of this Order and the Department may seek such remedies to the fullest extent.

You are hereby notified that you may request an adjudicatory hearing on this Order. The request must be made in writing within 30 days of receipt of this Order. The request must respond to each of the points of fact and law made in this Order and must clearly and concisely state the facts and issues of law which you intend to raise in the adjudicatory proceeding. The request must be addressed to: Docket Clerk, Office of General Counsel, Department of Environmental Quality Engineering, One Winter Street, 9th Floor, Boston, MA 02108.

Questions regarding the contents of this Order should be directed to: Mr. Stephen Johnson, 935-2160.

DATE: April 4, 1986



D.E.Q.E.

BY: Richard J. Chalpin
Acting Regional
Environmental Engineer

(617) 935-2160

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